

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION

UNITED STATES OF AMERICA,)
ex rel. JULIE WILLIAMS and)
JOHN MARTINEZ, M.D.,)
)
Relators,)
)
vs.)
)
RENAL CARE GROUP, INC., et al.,)
)
Defendants.)

ORDER

Defendants' motion to compel [Doc. #96] filed April 20, 2009 seeks to compel the United States to produce 323 documents of the Department of Health and Human Services which plaintiff has listed in a privilege log and claimed to be protected from discovery by the deliberative process privilege. The matter is fully briefed and ripe for disposition. The Court has given careful consideration to the parties' lengthy arguments and to the law cited therein.

In opposition to the motion, the government first makes several procedural arguments which the Court finds unavailing in the present circumstances. These include the challenge to the length of the combined motion/memorandum (three pages over the limit without a request for leave) and the failure to certify compliance with the meet-and-confer requirement of Local Rule 3.04. The Court also finds movants' failure to identify particular

discovery requests not to be a critical shortcoming here, where the issue presented is the assertion of privilege, not a challenge requiring the Court's ruling on objections to a particular discovery request. For the same reason, the government's arguments about whether certain matters are discoverable appears to be misplaced, in that the listing of the documents in the privilege log conceded that they were responsive to a proper discovery inquiry.

Turning to the heart of the privilege issue presented, the Court's conclusions are as follows. Defendants' challenge to the invocation of privilege is met by the government's providing a factual basis for asserting the privilege, by way of the information set forth in the privilege log itself and the detailed explanatory affidavits of Regional Inspectors General Michael J. Armstrong and Dwayne Grant. The government succeeds in making a threshold showing that the materials are both predecisional and deliberative, as the privilege requires.

The burden then returns to movants to overcome this threshold showing in order to obtain relief. This defendants fail to do. In the absence of a showing suggesting that the privilege is claimed in error or in bad faith, no *in camera* review is warranted. Neither have defendants persuaded the Court that, privilege notwithstanding, their compelling and particularized need for the materials overcomes the privilege. For these reasons, the motion to compel will be denied. Accordingly,

IT IS HEREBY ORDERED that defendants' motion to compel the United States to produce withheld documents [Doc. #96] is denied.

Dated this 10th day of June, 2009.

/s/Donald J. Stohr
UNITED STATES DISTRICT JUDGE